

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

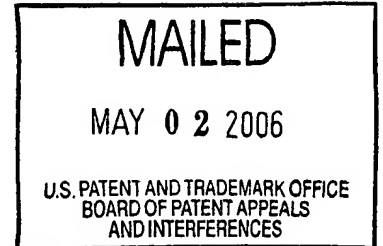
Ex parte ALLAN M. SCHROCK
and
EDWARD L. BOYD

Application 10/086,644

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on April 11, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being electronically returned to the examiner. The matters requiring attention prior to docketing are identified below:

A review of the Image File Wrapper (IFW) indicates that appellants filed an Appeal Brief on April 15, 2005 using the format set forth in 37 CFR § 41.37(c). However, the Appeal Brief does not fully comply with 37 CFR § 41.37(c).



37 CFR § 41.37 states:

(a)(1) Appellant must file a brief under this section within two months from the date of filing the notice of appeal under § 41.31.

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(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(i) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

.

(x) *Related proceedings appendix.* An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

(2) A brief shall not include any new or non-admitted amendment, or any new or non-admitted affidavit or other evidence. See § 1.116 of this title for amendments, affidavits or other evidence filed after final action but before or on the same date of filing an appeal and § 41.33 for amendments, affidavits or other evidence filed after the date of filing the appeal.

(d) If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, appellant will be notified of the reasons for non-compliance and given a time period within which to file

an amended brief. If appellant does not file an amended brief within the set time period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the appeal will stand dismissed.

(e) The time periods set forth in this section are extendable under the provisions of § 1.136 of this title for patent applications and § 1.550(c) of this title for ex parte reexamination proceedings.

An in-depth review of the Appeal Brief indicates that the following section is missing:

1) "Related proceedings appendix," as set forth in 37 CFR § 41.37(c)(1)(x).

A supplemental brief that is in compliance with § 41.37(c) is required. For more information, see the United States Patent and Trademark website www.uspto.gov, and, in particular, the web page entitled "More Information on the Rules of Practice Before the Board of Patent Appeals and Interferences, Final Rule" located at the following URL:

www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html

In addition, on page 2 of the Examiner's Answer mailed June 30, 2005), the examiner lists the following references under the heading "(9) Prior Art of Record";

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5,050,141	Thinesen	9-1991
5,526,290	Kanzaki	6-1996

It is noted that the Fishman reference cited on page 5 of the Examiner's Answer under the heading "(10) Grounds of Rejection" is not included as "Prior Art of Record." In accordance with § 1211 of the Manual of Patent Examining Procedure (MPEP) (8th Ed., Rev. 2, May 2004), clarification is required regarding the pertinence of the Fishman reference. In addition, MPEP § 1208(A)(9) states:

(A) REQUIREMENTS FOR EXAMINER'S ANSWER.

The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

. . .

(9) References of Record. A listing of the references of record relied on, and, in the case of nonpatent references, the relevant page or pages.

If appropriate, compliance with MPEP § 1208(A)(9) is required in listing the Fishman reference under the heading "Prior Art of Record" appearing in the Examiner's Answer mailed June 30, 2005.

Finally, the Examiner's Answer does not comply with the headings set forth in the new rules under 37 CFR § 41.37(c). Correction is required.

Accordingly, it is


ORDERED that the application is returned to the
Examiner:

- 1) to hold the Appeal Brief filed April 15, 2005 defective;
- 2) for notification to appellants to file a supplemental Appeal Brief in compliance with 37 CFR § 41.37;
- 3) for consideration of the supplemental Appeal Brief;
- 4) for clarification under MPEP § 1211 regarding the pertinence of the Fishman reference listed on page 5 of the Examiner's Answer mailed June 30, 2005;
- 5) if appropriate, for compliance with MPEP § 1208(A)(9) by listing the Fishman reference in a Supplemental Examiner's Answer under the heading "Evidence Relied Upon";
- 6) to vacate the Examiner's Answer mailed June 30, 2005, and issue a revised Examiner's Answer in compliance with the new rules which became effective on September 13, 2004;
- 7) to have a complete copy of any subsequent Examiner's Answer scanned into the IFW; and

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8) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

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